

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MICHAEL KINNARD
FITZGERALD, JR., Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
September 26, 2006

Petitioner-Appellee,

v

MICHAEL KINNARD FITZGERALD, SR.,

Respondent-Appellant,

and

SHARMETA LOVELY,

Respondent.

No. 266931
Wayne Circuit Court
Family Division
LC No. 05-438871-NA

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

MEMORANDUM.

Respondent appeals as of right from the order terminating his parental rights under MCL 712A.19b(3)(b)(i), (j), and (k)(iii). We affirm.

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one statutory ground for termination. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the child. *Id.* at 353. This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must be more than just maybe or probably wrong. *Sours, supra*.

Respondent contends that the trial court clearly erred in terminating his parental rights under MCL 712A.19b(3)(b)(i), (j), and (k)(iii) because the record is devoid of any testimony or evidence that he injured his son. In this case, the medical evidence clearly established that

during the first three months of this child's life he was repeatedly subjected to severe physical abuse, but no direct evidence showed who inflicted the injuries. Nevertheless, after a careful review of the evidence we are not left with a definite and firm conviction that the trial court's holding relative to respondent's involvement was clearly erroneous. *Miller, supra*. Rather, we agree with the trial court's conclusion that the circumstantial evidence and reasonable inferences drawn from that evidence showed respondent's involvement, and that placing the child back with him would likely result in further abuse.

Respondent next contends that termination of his parental rights was not in the child's best interests. Respondent's argument focuses on his desire to have custody of the child. However, as discussed above, the circumstantial evidence and reasonable inferences drawn from that evidence showed respondent's involvement with the injuries suffered by the child. Thus, the evidence did not demonstrate that the child's best interests precluded termination of respondent's parental rights. *Trejo, supra*.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder